

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

## Kevin Braithwaite

Plaintiff,

**V.**

Marcello Rispoli et al.,

Defendants.

C.A. No. 04-1542-GMS

## Trial By Jury Demanded

# AFFIDAVIT OF ROBERT WALLACE

I, Robert Wallace, having been duly sworn according to law, depose and state as follows:

1. I make this affidavit based upon personal information.
2. I am employed by the State of Delaware's Department of Correction as a Correctional Sergeant at the Delaware Correctional Center ("DCC") in Smyrna, Delaware. I have worked for the DOC since December 3, 1998. My duties include supervising and participating in the maintenance of discipline, order, security and housekeeping of assigned locations and/or units. Additional duties include periodic shakedowns of buildings and cellblocks to detect contraband and defects in the security system.
3. On October 9, 2004 at 9:00 AM, in Building #17, B Tier, C/O Nkowpara and I were conducting a strip search of Plaintiff Kevin Braithwaite. ("Braithwaite"). Braithwaite removed his shirt and pants as ordered. As Braithwaite got down to his underwear, a razor dropped out of what appeared to be a pocket in his underwear. I ordered Braithwaite to remove his underwear but he refused. I ordered him a second time

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to remove his underwear but again he refused. I then ordered Braithwaite to get dressed as he would need to go see the area Lieutenant for refusing to comply with the strip search. Suddenly, Braithwaite charged toward the cell door with his right hand clinched in a fist raised in the air. Braithwaite was able to get between the doorframe and the cell door with his right arm and shoulder. While attempting to push Braithwaite's arm back into the cell he throw a clinched fist punch at me.

4. I then proceeded to spray Braithwaite with capstun foam. Braithwaite eventually backed away from the door. Which permitted us to secure the cell while waiting for back-up assistance. While waiting for additional security, Braithwaite took something out of his underwear, placed it in his mouth and appeared to swallow it. When back-up assistance arrived, Braithwaite stated that he would come out of the cell and would no longer be a problem. As Sgt. Phillips placed one handcuff on Braithwaite, he turned around quickly pulling the cuff inward towards the cell and attempted to strike Sgt Phillips with a clinched fist punch. At that point, Sgt Phillips was able to pull the cuffed hand back toward him. I was able to come around behind Braithwaite where I grabbed around his shoulder and free arm. Nkowpara, Stevenson, Phillips and myself were then able to get inmate Braithwaite to the floor. When Braithwaite was taken to the floor we were all kind of piled on top of him with Phillips and myself on the upper half of his body and Nkwopara and Stevenson on the lower half. We were then able to control Braithwaite and place handcuffs and shackles on him. Braithwaite was then brought to his feet and he walked to SHU 20 under escort of Phillips, Stevenson, Nkwopara and myself. Braithwaite was then secured in a holding cell.

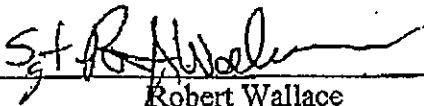
5. Sgt. Phillips contacted medical whereupon, Nurse Kera arrived to examine

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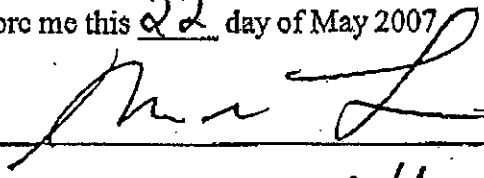
Braithwaite. Nurse Kera applied milk to Braithwaite's face to alleviate the effects of the capstun. After informing Lt. Yoder of the incident I returned to building #17 to complete the shakedown. During the shakedown, the underwear worn by Braithwaite was checked and found to have a pocket in the front. No other contraband was found.

6. The strip search/shakedown was conducted according to DOC procedures by C/O Nkowpara and myself as reflected in the Incident Reports filed. Due to Braithwaite's confrontational behavior, failure to comply with my direct orders, failure to comply with DOC policy and his attempts to assault staff he was moved to SHU 18 Isolation.

7. The amount of force needed to subdue Braithwaite was necessary as Braithwaite, despite being ordered twice to remove his underwear he refused both times. Braithwaite attempted to assault me by trying to strike me with his fist. Braithwaite also told us that after being capstunned that he would no longer be a problem, but later on attempted to strike Sgt. Phillips. At no time, did any of the officers or I present kick Braithwaite in the back of his head or stomp on his back. Subsequently, Braithwaite was written up for assault, disorderly or threatening behavior, possession of dangerous contraband, creating a health, safety or fire hazard, disrespect, failing to obey an order and possession of non-dangerous contraband.

  
Robert Wallace

SWORN TO AND SUBSCRIBED before me this 22 day of May 2007

  
NOTARY public

Exh. A-3

Phone#: 302-653-9261

**INCIDENT REPORT**Group#: N/A Type: Inmate Involved Incident Date: 10/09/2004 Time: 09:00 Confidential: NoFacility: DCC Delaware Correctional CenterFollowup Required: NoAssociated Disciplinary Report #(s): 1013422Incident Location: Bldg. 17 B TierLocation Description: cell BU8Violated Conditions: 1.02/200.201 Assault1.06/200.203 Disorderly or Threatening Behavior1.18/200.218 Possession of Dangerous Contraband2.03/200.106 Creating a Health, Safety or Fire Hazard2.06/200.108 Failing to Obey an Order2.13/200.111 Possession of Non-Dangerous Contraband**Description of Incident:**

On Sept. 9, 2004 at 0900 hours Sgt Wallace, Robert and C/o Nkowpara, Edwin were conducting a strip search of Inmate Brathwaite, Kevin SBI#00315294. Inmate Brathwaite was ordered by Sgt Wallace to completely strip down. Inmate Brathwaite took off his shirt and shorts but as he got to his underwear a razor fell out of what appeared to be a pocket in the front of the underwear. Inmate Brathwaite gave the razor to Sgt Wallace and Sgt Wallace ordered inmate to take off his underwear. Inmate Brathwaite refused and stated to Sgt Wallace that he wasn't getting naked for Sgt Wallace to look at his ass. Sgt Wallace again ordered inmate to take off his underwear, Inmate Brathwaite again refused. Sgt Wallace then ordered Inmate Brathwaite to get dress that he would need to go see the area Lt about refusing to strip. Inmate Brathwaite then charged the cell door and put his arm in it so that C/O Nkowpara and Sgt Wallace could not close it. As Sgt Wallace tried to push Inmate Brathwaite's arm back into the cell Inmate Brathwaite drew back his fist and threw a punch at Sgt Wallace. Sgt Wallace then sprayed Inmate Brathwaite with pepper foam. Inmate Brathwaite then backed away from the door and it was secure. Back-up was called, when Sgt Wallace called for the back-up Inmate Brathwaite took something out of the pocket in his underwear and put it in his mouth and appeared to swallow it. When back-up arrived Inmate Brathwaite stated he would come out and not give anymore problems. The cell door was then opened and Sgt Phillips, David started to handcuff Inmate Brathwaite. As Sgt Phillips placed the first cuff on Inmate Brathwaite, he (Inmate) turned in an attempt to strike Sgt Phillips. Inmate Brathwaite was taken to the floor where he was handcuffed and shackled and escorted to SHU 20 and secured in a cage by Sgt Phillips and Sgt Stevenson. Lt. Yoder was notified of the incident details. Sgt Wallace then returned to Bldg 17 and completed the shakedown on Inmate Brathwaite's cell. During the shakedown of Inmate Brathwaite's cell the underwear that Inmate Brathwaite had on were checked and found to have a pocket in the front. No other contraband was found during the shakedown. The contraband was secured by Sgt Wallace and this report was completed.

Injured Persons	Hospitalized	Nature Of Injuries
N/A	N/A	N/A

Evidence Type: 01 pair of underwear, 01 razorDate Collected: 10/09/2004Discovered By: Robert, Wallace SgtSecured By: Robert, Wallace SgtType of Force Used: ☒ PHYSICAL ☐ CHEMICAL ☐ STUN ☐ OTHER ☒ CAPSTUN ☐ NONE

Restraints Used : handcuffs and shackles

**Immediate Action Taken:**

Inmate pepper foamed, back-up called, contraband secured, area LT notified of incident and all appropriate paperwork accomplished

Individuals Involved			
Person Code	Name	SBI#	Title
Inmate	Kevin, Brathwaite C	00315294	N/A
Staff	Robert, Wallace J	N/A	CO Corporal/Sgt. - Large Inst.
Staff	Edwin, Nkowpara O	N/A	Correctional Officer
Staff	David, Phillips	N/A	CO Corporal/Sgt. - Large Inst.
Staff	Mathew, Stevenson	N/A	CO Corporal/Sgt. - Large Inst.

Phone#: 302-653-9261

**INCIDENT REPORT****Group#:** N/A      **Type:** Inmate Involved      **Incident Date:** 10/09/2004      **Time:** 09:00      **Confidential:** No**Reporting Officer:** Wallace, Robert J (Co Corporal/Sgt. - Large Inst.)      **Entered By:** Wallace, Robert J (Co Corporal/Sgt. - Large Inst.)**Approval Information**☒ **Approved**      ☐ **Disapproved**      **Date:** 10/09/2004      **Approved by:** Reynolds, Kirk (Shift Commander - Large Inst.)**Comments:** Inmate was seen by medical then placed in SHU isolation.

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